

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FAROUK SYSTEMS, INC.,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION,

Defendant.

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Civil Action No. 4:09-cv-3499

AMENDED FINAL JUDGMENT AND PERMANENT INJUNCTION

Pending before this Court is Plaintiff Farouk Systems Inc.’s (“Farouk”) Motion for Entry of Final Judgment against Defendant Costco Wholesale Corporation (“Costco”). (Doc. No. 87.) The Court presided over a jury trial in this case that began on October 3, 2011 and lasted through October 12, 2011. The jury made findings that the Court received, filed, and entered of record. The jury found that Costco infringed Farouk’s CHI, Global Beauty, and Farouk Systems trademarks. For these infringements, the jury awarded statutory damages in the amounts of \$200,000, \$7,500 and \$7,500, respectively. On October 31, 2011, Farouk Systems moved for entry of judgment on the verdict.

Costco asks the Court to ignore the jury’s findings, reurging an argument that this Court has already rejected—that statutory damages under the Lanham Act are to be determined by the Court and not a jury.¹ The Court has not changed its opinion on this matter, and declines Costco’s invitation to disturb or adjust the jury’s award of statutory damages.

¹ The Court rejected this argument in its September 2, 2011 Memorandum and Order, holding that “the right to a jury trial exists on the issue of statutory damages.” (Doc. No. 73.)

Farouk also seeks an injunction under 15 U.S.C. § 1116, which provides that courts shall have power to grant injunctions . . . to prevent the violation of any right of the registrant of a mark” Farouk proposes two alternative injunctions. In the broader of the two, Farouk asks the Court (1) to enjoin Costco and National Clothing Company, Inc. (“National”) from “promoting, offering for sale, or selling any Model No. GF 1001 CHI Ceramic Hairstyling Irons” not purchased directly from Farouk; and (2) to fix the amount of liquidated damages for any future breach of the injunction at \$1,000 per CHI iron sold in violation of the injunction. Farouk’s second, narrower proposal asks the Court to enjoin Costco and National from “promoting, offering for sale, or selling any *counterfeit* Model No. GF 1001 CHI Ceramic Hairstyling Irons” (emphasis added).

While the Court agrees with Costco that Farouk’s first proposal is overbroad and unwarranted under the facts of this case, it finds that the narrower injunction Farouk proposes is appropriate. Enjoining Costco from selling counterfeit irons simply traces the Lanham Act’s restrictions, and does little to burden Costco. On the other hand, it offers Farouk protection of its trademarks.

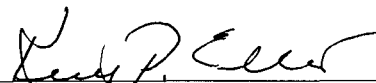
Finally, Farouk seeks court costs pursuant to Federal Rule of Civil Procedure 54(d) and 28 U.S.C. § 1920, and provides the Court with a Bill of Costs, a supporting affidavit, and relevant invoices. (Doc. No. 87, Ex. C.) Costco does not object to court costs, so the Court presumes that the costs sought were necessary for this case. *See Kellogg Brown & Root Intern., Inc. v. Altanmia Commercial Mktg. Co.*, 2009 WL 1457632, at *3 (S.D. Tex. 2009) (“If the party against whom costs are taxed does not specifically object, the costs sought are presumed to be necessary for the case.”).

In light of the foregoing, the Court renders the following judgment:

1. The Court orders that Farouk is to recover \$200,000 in statutory damages and \$44,360.96 in court costs (subject to amendment based on the final trial transcript) from Costco;
2. The Court orders postjudgment interest payable on all of the above amounts allowable by law at the rate of 5% from the date this Final Judgment is entered until the date this Final Judgment is paid;
3. The Court enters a permanent injunction pursuant to 15 U.S.C. § 1116 enjoining Costco and National from promoting, offering for sale, or selling any counterfeit Model No. GF 1001 CHI Ceramic Hairstyling Irons bearing the trademark CHI, Registration No. 2660257; and
4. The Court instructs Costco to provide written confirmation to Farouk when the destruction of the CHI Irons in its possession has been completed.

This is a **FINAL JUDGMENT**.

SIGNED at Houston, Texas on this the 5th day of November, 2011.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE